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ADMIRALTY.

1. Gedney Channel, being the main entrance to the harbor of New York, is as much a part of the inland waters of the United States within the meaning of the act of March 3, 1885, c. 354, 23 Stat. 438, as the harbor within the entrance. *The Delaware*, 459.
2. The real point aimed at by Congress in that act was to allow the original code (Rev. Stat. § 4233) to remain in force so far as it applies to pilotage waters, or waters within which it is necessary, for safe navigation, to have a local pilot. *Ib.*
3. The Delaware, returning to New York in ballast only, entered Gedney Channel upon a true course of W. by S. About the same time, the Talisman, a tug towing a pilot boat, entered it from the northwest, upon a course about S.S.E., and not far from a right angle to the course of the Delaware. Under these circumstances, as they were approaching each other on crossing courses, the Delaware was bound to keep out of the way, and the Talisman to keep her course. The Delaware made no effort to avoid the Talisman, but kept on her course until about a minute before collision, when her engines were stopped too late. The Talisman was struck and sunk, and became a total loss. *Held*, that the Delaware was grossly in fault. *Ib.*
4. The Supervising Inspector's rules, so far as they require whistles to be used, ought to be construed in harmony with the International Code, and, as applied to vessels upon crossing courses, they mean that when a single blast is given by the preferred steamer she intends to comply with her legal obligation to keep her course, and throw upon the other steamer the duty of avoiding her. *Ib.*
5. It is the primary duty of a steamer, having the right of way when approaching another steamer, to keep her course; all authorities agree that this rule applies so long as there is nothing to indicate that the approaching steamer will not discharge her own obligation to keep out of the way; and it is settled law in the United States that the preferred steamer will not be held in fault for maintaining her course and speed, so long as it is possible for the other to avoid her by porting, at least in the absence of some distinct indication that she is about to fail in her duty. *Ib.*
6. The facts stated and referred to in the opinion leave too much doubt about the fault of the Talisman to justify the court in apportioning the damages. *Ib.*

7. The Delaware is not exempted from liability by the provisions of the act of February 13, 1893, c. 105, 27 Stat. 445, entitled "An act relating to navigation of vessels, bills of lading, and to certain obligations, duties and rights in connection with the carriage of property." *Ib.*

ANCILLARY SUIT.

See JURISDICTION, A, 1.

APPEAL.

See JURISDICTION, A, 8;
PRACTICE, 8.

BANKRUPTCY.

1. The limitation of two years made by Rev. Stat. § 5057 to suits and actions between an assignee in bankruptcy and persons claiming an adverse interest touching any property or rights of property transferable to or vested in such assignee, is applicable only to suits growing out of disputes in respect of property and of rights of property of the bankrupt which came to the hands of the assignee, in which adverse claims existed while in the hands of the bankrupt and before assignment. *Dushane v. Beall*, 513.
2. Assignees in bankruptcy are not bound to accept property which, in their judgment, is of an onerous and unprofitable nature, and would burden instead of benefiting the estate, and can elect whether they will accept or not after due consideration and within a reasonable time, while, if their judgment is unwisely exercised, the bankruptcy court is open to compel a different course. *Ib.*
3. From the record in this case the court is constrained to the conclusion that the assignee should not have been held by the court below to have exercised the right of choice between prosecuting the claim and abandoning it, in the absence of any evidence whatever to justify the conclusion that he had knowledge, or sufficient means of knowledge, of its existence prior to August 10, 1888; and that therefore there was error in its judgment. *Ib.*

CASES AFFIRMED.

1. *Baltzer v. North Carolina*, 161 U. S. 240, followed. *Baltzer and Taaks v. North Carolina*, 246.
2. *Home Insurance & Trust Co. v. Tennessee*, 161 U. S. 198, followed. *Home Ins. & Trust Co. v. Tennessee*, 200.
3. *Spalding v. Vilas*, 161 U. S. 483, followed. *Spalding v. Dickinson*, 499.

See CONSTITUTIONAL LAW, A, 2;

JURISDICTION, E, 2;

LOCAL LAW, 4.

CASES EXAMINED.

See TAX AND TAXATION, 4.

CENTRAL PACIFIC RAILROAD.

1. An examination of the statutes of the United States relating to the construction of a railroad from the Missouri River to the Pacific Ocean, especially the acts of July 1, 1862, c. 120, 12 Stat. 489, and July 2, 1864, c. 216, 13 Stat. 356, shows that every subscriber to the Union Pacific Railroad Company must be deemed to have become such upon the condition, implied by law, that he should not be personally liable for the debts of the corporation. *United States v. Stanford*, 412.
2. It is equally clear that Congress intended to grant national aid to all the corporations constructing that connecting line of railroad upon terms and conditions applicable alike to all, with no purpose to make discriminations against any one part of the line, and that the imposition of a liability upon the stockholders of the Central Pacific Railroad Company for the debts of that corporation, arising out of the bonds which it received from the United States, when no such liability was imposed upon the Union Pacific Railroad Company on account of like bonds received by it, is entirely inconsistent with that equality. *Ib.*
3. The United States has no claim against the stockholders of the Central Pacific Railroad Company on account of the bonds issued to that company by the United States to aid in the construction of its road. *Ib.*
4. This adjudication is not to be taken as deciding that the stockholders of the Central Pacific Railroad Company either can or cannot be made liable for its debts to the United States in some other way than under the Pacific railroad acts and by the acceptance of the United States bonds to aid in the construction of the road; nor whether the adoption of the California corporation as an instrument of the national government in accomplishing a national object, exempted its stockholders from liability, under the constitution and laws of California, to ordinary creditors. *Ib.*

CLAIMS AGAINST THE UNITED STATES.

1. By the act of February 26, 1853, c. 81, § 1, (Rev. Stat. § 3477,) every specific assignment, in whatever form, of any claim against the United States, under a statute or treaty, whether to be presented to one of the executive departments, or to be prosecuted in the Court of Claims, is void, unless assented to by the United States. *Ball v. Halsell*, 72.
2. A contract, by which the owner of a claim against the United States for Indian depredations appointed an attorney to receive and give acquittances for one half of the money which the attorney might recover of the United States upon that claim, will not, although the attorney has obtained from the Secretary of the Interior a recom-

mendation for the payment of a certain sum upon that claim, but for the payment of which Congress has made no appropriation, support an action by the attorney against the principal for part of a less sum recovered upon that claim from the United States in the Court of Claims under the subsequent act of March 3, 1891, c. 358, out of which the attorney has been allowed and paid less than twenty per cent of that sum, as provided by that act. *Ib.*

3. The party who, under the provisions of § 4 of the act of March 3, 1891, c. 538, 26 Stat. 853, elects to reopen before the Court of Claims a case under that act heard and determined by the Commissioner of Indian Affairs, thereby reopens the whole case, irrespective of the decision by the Commissioner, and assumes the burden of proof. *Leighton v. United States*, 291.
4. The jurisdiction conferred upon the Court of Claims by the first jurisdictional clause in the first section of that act is confined to property taken by Indian tribes in amity with the United States; and as it appears in this case that the Indians who committed the injury to the claimant were at the time engaged in hostilities against the United States, the Court of Claims was without jurisdiction to render a judgment against the United States, even though the hostilities were carried on for the special purpose of resisting the opening of a military road. *Ib.*
5. The same result is reached practically if the claim is regarded as within the jurisdiction of that court under the second jurisdictional clause of the first section of that act. *Ib.*
6. There is nothing in the legislation prior to the act of 1891, which binds the government to the payment of this claim. *Ib.*
7. In an action brought by a Circuit Court commissioner for the district of Louisiana to recover fees for alleged services rendered the United States in prosecutions under Rev. Stat. § 1986, the Court of Claims found that the prosecutions were the result of a purpose on the part of party managers to purge, as they alleged, the register of illegal voters; that the commissioner made no inquiry or examination of witnesses to satisfy himself of probable cause, but simply issued warrants on the affidavits filed; that the warrants issued were not signed by himself but by a number of clerks who used a stamp, which was a fac-simile of his signature, until the stamp was broken, and then simply wrote his name; that in the issuance of warrants the commissioner exercised no discretion, and made no personal examination of the complaints or witnesses, but issued a warrant in all cases in which a complaint was made; that the warrants were issued generally for the purpose of affecting the register of votes to be used in the election, and not to arrest and punish offenders; that in a large majority of the 1303 cases in which the defendants were discharged it did not appear that the commissioner performed any service in investigating the offences charged, nor in judicially determining the guilt or innocence of the

parties. *Held*, that these findings justified the further finding of that court that "from said facts the court finds the ultimate fact to be that the claimant's testator did not perform the services for the United States in good faith for the purpose of enforcing the criminal law," and the judgment entered thereon in favor of the United States. *Southworth v. United States*, 639.

See JURISDICTION, E.

CONSTITUTIONAL LAW.

A. OF THE UNITED STATES.

1. The constitutional right of a defendant to be informed of the nature and cause of the accusation against him entitles him to insist, at the outset, by demurrer or by motion to quash, and, after verdict, by motion in arrest of judgment, that the indictment shall apprise him of the crime charged with such reasonable certainty that he can make his defence and protect himself after judgment against another prosecution for the same offence; and this right is not infringed by the omission from the indictment of indecent and obscene matter, alleged as not proper to be spread upon the records of the court, provided the crime charged, however general the language used, is yet so described as reasonably to inform the accused of the nature of the charge sought to be established against him; and, in such case, the accused may apply to the court before the trial is entered upon for a bill of particulars, showing what parts of the paper would be relied on by the prosecution as being obscene, lewd and lascivious, which motion will be granted or refused, as the court, in the exercise of a sound legal discretion, may find necessary to the ends of justice. *Rosen v. United States*, 29.
2. The provision in the charter of the plaintiff in error that "said institution shall have a lien on the stock for debts due it by the stockholders before and in preference to other creditors, except the State for taxes, and shall pay to the State an annual tax of one half of one per cent on each share of capital stock, which shall be in lieu of all other taxes," limits the amount of tax on each share of stock in the hands of the shareholders, and any subsequent revenue law of the State which imposes an additional tax on such shares in the hands of shareholders impairs the obligation of the contract, and is void. *Farrington v. Tennessee*, 95 U. S. 679, affirmed to this point. *Bank of Commerce v. Tennessee*, 134.
3. The decision of the Supreme Court of North Carolina, made in an action to recover on bonds issued by the State in 1868, that the constitution of 1868, (in force when the bonds were issued,) giving the Supreme Court of the State jurisdiction to hear claims against the State, but providing that its decision should be merely recommendatory, to be reported to the legislature for its action, had been repealed by an amendment to the constitution made in 1879 which forbade the

general assembly to assume or provide for the payment of debts incurred by authority of the convention of 1868, or by the legislature that year or in two sessions thereafter, unless ratified by the people at an election held for that purpose, and that the court was without jurisdiction to render judgment of recommendation on a claim against the State whose validity was thus denied by the state constitution, did not in any way impair the obligation of contracts entered into by the State when the constitution of 1868 was in force. *Baltzer v. North Carolina*, 240.

4. In an action against importers brought to recover from them the value of merchandise, originally belonging to them, and alleged to have been forfeited to the United States under the provisions of the Customs Administrative Act of June 10, 1890, c. 407, § 9, the defendants cannot demand, as of right, that they shall be confronted, at the trial, with witnesses who testify in behalf of the government. *United States v. Zucker*, 475.
5. The provision in the General Statutes of Connecticut, (Revision of 1888, § 2546,) that "no person shall at any time kill any woodcock, ruffed grouse or quail for the purpose of conveying the same beyond the limits of this State; or shall transport or have in possession, with intent to procure the transportation beyond said limits, any of such birds killed within this State," is legislation which it is within the constitutional power of the legislature of a State to enact. *Geer v. Connecticut*, 519.
6. There is an indisputable legal presumption that a state corporation, when sued or suing in a Circuit Court of the United States, is composed of citizens of the State which created it, and hence such a corporation is itself deemed to come within that provision of the Constitution of the United States which confers jurisdiction upon the Federal courts in "controversies between citizens of different States." *St. Louis & San Francisco Railway Co. v. James*, 545.
7. It is competent for a railroad corporation organized under the laws of one State, when authorized so to do by the consent of the State which created it, to accept authority from another State to extend its railroad into such State and to receive a grant of powers to own and control, by lease or purchase, railroads therein, and to subject itself to such rules and regulations as may be prescribed by the second State; and such legislation on the part of two or more States is not, in the absence of inhibitory legislation by Congress, regarded as within the constitutional prohibition of agreements or compacts between States. *Ib.*
8. Such corporations may be treated by each of the States whose legislative grants they accept as domestic corporations. *Ib.*
9. The presumption that a corporation is composed of citizens of the State which created it accompanies such corporation when it does business in another State, and it may sue or be sued in the Federal

courts in such other State as a citizen of the State of its original creation. *Ib.*

10. That presumption of citizenship is one of law, not to be defeated by allegation or evidence to the contrary. *Ib.*
11. The provision in the Arkansas statute of March 13, 1889, that a railroad corporation of another State which had leased or purchased a railroad in Arkansas and filed with the Secretary of State of that State, as provided by the act, a certified copy of its articles of incorporation, should become a corporation of Arkansas, does not avail to create an Arkansas corporation out of a foreign corporation complying with those provisions, in such a sense as to make it a citizen of Arkansas within the meaning of the Federal Constitution, and subject it to a suit in the Federal courts sitting in the State of Arkansas, brought by a citizen of the State of its origin. *Ib.*
12. The provision in the act of February 11, 1893, c. 83, 27 Stat. 443, "that no person shall be excused from attending and testifying or from producing books, papers, tariffs, contracts, agreements, and documents before the Interstate Commerce Commission, or in obedience to the subpoena of the Commission, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to criminate him or subject him to a penalty or forfeiture; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing, concerning which he may testify, or produce evidence, documentary or otherwise, before said Commission or in obedience to its subpoena, or the subpoena of either of them, or in any such case or proceeding," affords absolute immunity against future prosecutions, Federal or state, for the offence to which the question relates, and deprives the witness of his constitutional right to refuse to answer. *Brown v. Walker*, 591.

See CORPORATION, 4, 5;
RAILROAD, 6, 14, 15.

B. OF THE STATES.

Kentucky. See RAILROAD, 15.
Texas. See LOCAL LAW, 6, 7.

CONTRACT.

1. A contract for the sale of goods "shipping or to be shipped during this month from the Philippines to Philadelphia, per steamer *Empress of India*," at a certain price "*ex ship*;" "sea-damages, if any, to be taken at a fair allowance; no arrival, no sale;" and providing that if, by any unforeseen accident, she is unable to load and no other steamer can be procured within the month, the contract is to be void; does not require the goods to be carried to their destination by the vessel named; and is satisfied if the goods are put on board of her at the Philippines

at the time specified, and, upon her being so injured on the voyage by perils of the sea as to be unable to carry them on, are forwarded by her master by another steamer to Philadelphia. *Harrison v. Fortlage*, 57.

2. After a critical examination of the record, the court, on the facts, finds that the contract which forms the subject of controversy in this suit is a valid contract, and directs judgment for the defendant in error for the principal sum which it finds to be due him, but orders a correction to be made in the calculation of interest by the court below. *Spalding v. Mason*, 375.
3. Under a contract which, though its validity was disputed, is found to have been valid, the defendant below had sundry transactions in buying and selling grain with the plaintiffs below, between early in August, 1888, and April 26, 1889, through which he had become largely indebted to them. On or about the latter date the plaintiffs asked of the defendant authority to transfer the May wheat to June wheat, to which no answer was given. Nevertheless they sold the May wheat at a loss and made purchases of June wheat on his account, and informed him of both transactions. On June 8 all open contracts were closed at a loss, and the defendant having refused payment, this action was begun. There was no controversy as to the correctness of any of the items except those relating to the June purchase. *Held*, that the unauthorized voluntary act of the plaintiffs could not be said, as matter of law, to have been ratified by defendant by his mere retention, without complaint, of an account and statement rendered to him "that said change had been made," or, in other words, that plaintiffs had made a new purchase for his account. *Hansen v. Boyd*, 397.

CORPORATION.

1. The legal existence of a corporation is not cut short by its insolvency and the consequent appointment of a receiver; and there is nothing in the statutes relating to national banks which takes them out of the operation of this general rule. *Chemical National Bank v. Hartford Deposit Co.* 1.
2. A judicial sale and conveyance, made under order of court, of the franchises of a corporation whose taxation is limited by the act of the legislature of the State incorporating it to a rate therein named, carries to the purchaser, (if anything,) only the franchise to be a corporation; and a corporation organized to receive and receiving conveyance of such franchises, is not the same corporation as the original corporation, and is liable to taxation according to the constitution and laws of the State in force at the time of the sale, or which may be subsequently adopted or enacted, and is not entitled to the limitation and exemption contained in the original act of incorporation. *Mercantile Bank v. Tennessee*, 161.

3. A corporation organized for the purpose of doing an insurance business, under an act of the legislature of the State of Tennessee passed before the adoption by that State of its constitution of 1870, with a provision in the charter limiting the rate and extent of taxation by the State, does not continue to enjoy the exemption if its corporate objects and business are changed to those of a bank by legislation enacted subsequent to the adoption of that constitution. *Memphis City Bank v. Tennessee*, 186.
4. Where a charter authorizes a company in sweeping terms to do certain things which are unnecessary to the main object of the grant, and not directly and immediately within the contemplation of the parties thereto, the power so conferred, so long as it is unexecuted, is within the control of the legislature and may be treated as a license, and may be revoked, if a possible exercise of such power is found to conflict with the interests of the public. *Pearsall v. Great Northern Railway Co.* 646.
5. The court epitomizes, in its opinion, several previous cases for the purpose of showing the general trend of opinion in this court upon the subject of corporate charters and vested rights. *Ib.*

See CONSTITUTIONAL LAW, A, § to RAILROAD, 13, 14, 15;
 11; TAX AND TAXATION, 1, 2, 4,
 JURISDICTION, C, 2; 5, 6, 7, 8.

COURT AND JURY.

In the absence of a request to direct a verdict, this court must assume, when only a part of the evidence is before it, that there was sufficient evidence to warrant the trial court to submit the consideration of the facts to the jury. *Hansen v. Boyd*, 397.

See CRIMINAL LAW, 3, 4.

CRIMINAL LAW.

1. The inquiry, in proceedings under Rev. Stat. § 3893, is whether the paper charged to have been obscene, lewd, and lascivious was in fact of that character, and if it was of that character and was deposited in the mail by one who knew or had notice at the time of its contents, the offence is complete, although the defendant himself did not regard the paper as one that the statute forbade to be carried in the mails. *Rosen v. United States*, 29.
2. Every one who uses the mails of the United States for carrying papers or publications must take notice of what, in this enlightened age, is meant by decency, purity, and chastity in social life, and what must be deemed obscene, lewd, and lascivious. *Ib.*
3. When the evidence before the jury, if clear and uncontradicted upon any issue made by the parties, presents a question of law, the court can, without usurping the functions of the jury, instruct them as to the principles applicable to the case made by such evidence. *Ib.*

4. Upon a trial for murder, where the question is whether the killing was in self-defence, evidence that the deceased was a larger and more powerful man than the defendant, as well as evidence that the deceased had the general reputation of being a quarrelsome and dangerous man, is competent evidence for the defendant. *Smith v. United States*, 85.
5. Upon the question whether a homicide was committed in self-defence, witnesses called by the defendant testified that the deceased had the general reputation of being a man of a quarrelsome and dangerous character; and being asked on cross-examination whether they had ever been arrested for anything, it appeared that one of them had been arrested, convicted and imprisoned for selling whiskey, and others had been arrested, but not convicted, for various offences. The judge instructed the jury that reputation was the reflection of character, and, in order to be entitled to consideration, must come from a pure source, and be the reflection of honest and conscientious men, who have character themselves; that, if a man is without character himself, his action characterized by crime, his conscience seared by criminal conduct, he is incompetent to know what character is; and that if it was the reflection of keepers of gambling hells, and violators of law, and prison convicts, the jury should cast it aside as so much worthless matter. *Held*, that the defendant, having excepted to this instruction, and been convicted of murder, was entitled to a new trial. *Ib.*
6. The provision in Rev. Stat. § 5480, as amended by the act of March 2, 1889, c. 393, 25 Stat. 873, that "if any person having devised or intending to devise any scheme or artifice to defraud . . . to be effected by either opening or intending to open correspondence or communication with any person, whether resident within or outside the United States, by means of the Post Office Establishment of the United States, or by inciting such other person or any person to open communication with the person so devising or intending, shall, in and for executing such scheme or artifice or attempting so to do, place or cause to be placed, any letter, packet, writing, circular, pamphlet, or advertisement, in any post office, branch post office, or street or hotel letter-box of the United States, to be sent or delivered by the said Post Office Establishment, or shall take or receive any such therefrom, such person so misusing the Post Office Establishment shall, upon conviction, be punishable," etc., includes everything designed to defraud by representations as to the past or present, or suggestions and promises as to the future; and it was enacted for protecting the public against all intentional efforts to despoil, and to prevent the post office from being used to carry them into effect. *Durland v. United States*, 306.
7. The refusal to quash an indictment on motion is not, generally, assignable for error. *Ib.*

8. The omission in an indictment for violating the above act to state the names of the parties intended to be defrauded, and the names and addresses on the letters, is satisfied by the allegation, if true, that such names and addresses are to the jury unknown. *Ib.*
9. The offence described in the statute is committed when the contriver of a scheme to defraud, with a view of executing it, deposits letters in the post office which he thinks may assist in carrying it into effect, whether they are so effective or not. *Ib.*
10. The objection that an indictment is multifarious is presented too late, if not taken until after the verdict. *Ib.*
11. The newspaper article, in the note on page 447, while its language is coarse, vulgar, and, as applied to an individual, libellous, was not of such a lewd, lascivious and obscene tendency, calculated to corrupt and debauch the minds and morals of those into whose hands it might fall, as to make it an offence to deposit it in the post office of the United States, to be conveyed by mail and delivered to the person to whom it was addressed. *Swearingen v. United States*, 446.
12. The defendant was indicted for perjury alleged to have been committed on the 7th of June. The minutes of the stenographer of the testimony, alleged to be false, were read upon the trial, and they said that the testimony alleged to be false was given on the 6th of June, instead of the 7th. The defendant, being convicted, moved for a new trial upon the ground that the variance was fatal, which was refused. *Held*, that such a variance was not material in this case. *Matthews v. United States*, 500.

See CONSTITUTIONAL LAW, A, 1;
JURISDICTION, D.

CUSTOMS DUTIES.

See CONSTITUTIONAL LAW, A, 4.

DEED.

1. The decree in the equity cause of *Pippert v. English* was not void for want of personal service on English and his wife, as the laws relating to the District of Columbia permit service by publication upon absent defendants. *Lynch v. Murphy*, 247.
2. And further, as the evidence shows that Pippert had no knowledge of the attempt by Mrs. English to incumber the land in question by a deed of trust, the recording of the instrument did not give him constructive notice of it, as the formalities required by law to authorize the recording were not complied with. *Ib.*
3. That deed of trust was inoperative as a legal instrument. *Ib.*
4. There being no actual notice, and the recording of the defective deed not operating as constructive notice, the alleged equitable lien is wholly inoperative against those holding under the decree below. *Ib.*

See LOCAL LAW, 4.

DEPUTY MARSHAL.

See MARSHAL.

DISTRICT OF COLUMBIA.

1. Land in the city of Washington was sold for non-payment of certificates issued by the city government for the cost of local improvements, and was bought in by the holder of the certificates for the sum which they represented. The sale was set aside for defects caused by the negligence of the officers of the city government in failing to make assessments as required by law. The purchaser then sued the District of Columbia, which had succeeded to the city government of Washington, to recover the value of the original certificates. *Held*, that as the work was done in pursuance of a valid contract, of which the city and the District received the benefit, and as the required assessment had not been made, through the failure of the city and the District, the District became liable, and the certificates were valid obligations against it. *District of Columbia v. Lyon*, 200.
2. The duty is imposed upon the Washington Gas Light Company by the terms of its charter, the nature of its business, and the uses to which gas boxes placed in the sidewalks of the city of Washington are put, as an appliance ordinarily used by the company to connect its mains with a house where gas is to be used, to supervise and keep those gas boxes in order; and if an injury happens to a person by reason of one of those boxes being out of order and in need of repair and unsafe, and an action is brought against the District of Columbia to recover damages for such injury, and the Gas Company is notified and is given an opportunity to defend, and a trial is had resulting in a verdict and judgment for the plaintiff against the District, which the District is obliged to pay, the District has a cause of action against the Gas Company, resulting from these facts. *Washington Gas Light Co. v. District of Columbia*, 316.
3. In such action, for the purpose of ascertaining the subject-matter of the controversy between the person who was injured and the District, and fixing the scope of the thing adjudged, the entire record, including the testimony offered, may be examined. *Ib.*
4. The judgment against the District, rendered after notice to the Gas Company, and after opportunity afforded it to defend, is conclusive of the liability of the company to the District. *Ib.*

DOWER.

Section 18 of the act of Congress of March 3, 1887, c. 397, conferring and regulating the right of dower, applies to the Territory of Utah only, and not to other Territories of the United States. *France v. Connor*, 65.

EQUITY.

1. While mere inadequacy of price has rarely been held sufficient in itself to justify setting aside a judicial sale of property, courts are not slow to seize upon other circumstances impeaching the fairness of the transaction, as a cause for vacating it, especially if the inadequacy be so gross as to shock the conscience. *Schroeder v. Young*, 334.
2. If the sale has been attended by any irregularity, as if several lots have been sold in bulk where they should have been sold separately, or sold in such manner that their full value could not be realized; if bidders have been kept away; if any undue advantage has been taken to the prejudice of the owner of the property, or he has been lulled into a false security; or, if the sale has been collusively, or in any other manner, conducted for the benefit of the purchaser, and the property has been sold at a greatly inadequate price, the sale may be set aside, and the owner permitted to redeem. *Ib.*
3. There are other facts in this case, stated in the opinion, in addition to the grossly inadequate price realized for the property, that afford ample justification for the action of the court below in permitting the plaintiff to redeem upon equitable terms, and ordering a reconveyance of the property. *Ib.*
4. The issue of an alias execution for the original amount of the judgment, after the return of a prior execution, satisfied to the amount of nearly one half of such judgment, the sale of property thereunder to an amount more than sufficient to satisfy the amount actually due, and the payment of the excess to the plaintiff's attorneys, invalidate the entire proceedings. *Ib.*
5. Whether the levy upon the interest of a co-tenant in a specific part, designated by metes and bounds, of a certain larger quantity of land is valid, is not decided. *Ib.*
6. Before the time had expired to redeem from the execution sale, the plaintiff was told by the defendant that he would not be pushed, that the statutory time to redeem would not be insisted upon, and, believing it, acted and relied upon such assurance. *Held*, that under such circumstances the purchaser was estopped to insist upon the statutory period, notwithstanding the assurances were not in writing and were made without consideration; and that there was a concurrent jurisdiction of a court of equity, founded upon its general right to relieve from the consequences of fraud, accident or mistake, which might be exercised, notwithstanding the statutory period for redemption has expired. *Ib.*

See DEED;

EVIDENCE, 1.

ERROR.

Some statements by the court of the evidence are held not to be substantial error. *Hansen v. Boyd*, 397.

ESCHEAT.

See LOCAL LAW, 5, 6, 7.

ESTOPPEL.

See DISTRICT OF COLUMBIA, 4.

EVIDENCE.

1. When the plaintiff in a bill in equity alleges facts material to his recovery, and the defendant in his answer denies them under oath, the burden of proof is thrown upon the plaintiff. *Cochran v. Blout*, 350.
2. It being shown that the transactions in dispute were to be conducted under the rules and regulations of the Board of Trade at Chicago, and that those rules and regulations were explained to the defendant below, they became competent evidence. *Hansen v. Boyd*, 397.
3. Stenographers' minutes of evidence are not records. *Matthews v. United States*, 500.

See CRIMINAL LAW, 3, 4, 12;
DISTRICT OF COLUMBIA, 3.

EXCEPTION.

When the defendant at the close of plaintiff's evidence, requests an instruction to the jury to charge in his favor, which is refused, and he then introduces testimony, an exception to that refusal is waived. *Hansen v. Boyd*, 397.

EXECUTIVE DEPARTMENTS, HEADS OF.

1. The act of the head of one of the Departments of the government in calling the attention of any person having business with such Department to a statute relating in any way to such business, cannot be made the foundation of a cause of action against such officer. *Spalding v. Vilas*, 453.
2. The same general considerations of public policy and convenience which demand for judges of courts of superior jurisdiction immunity from civil suits for damages arising from acts done by them in the course of the performance of their judicial functions, apply to a large extent to official communications made by heads of Executive Departments when engaged in the discharge of duties imposed upon them by law. *Ib.*

See POSTMASTER GENERAL.

EXECUTION.

See LOCAL LAW, 2, 3.

EXECUTION SALE.

See EQUITY, 1 to 6.

EXTRADITION.

1. A writ of *habeas corpus* cannot perform the office of a writ of error, and in extradition proceedings, if the committing magistrate has jurisdiction of the subject-matter and of the accused, and the offence charged is within the terms of the treaty of extradition, and the magistrate, in arriving at a decision to hold the accused, has before him competent legal evidence on which to exercise his judgment as to whether the facts are sufficient to establish the criminality of the accused for the purposes of extradition, such decision cannot be reviewed on *habeas corpus*. *Ornelas v. Ruiz*, 502.
2. Whether an extraditable crime has been committed is a question of mixed law and fact, but chiefly of fact, and the judgment of the magistrate rendered in good faith on legal evidence that the accused is guilty of the act charged, and that it constitutes an extraditable crime, cannot be reviewed on the weight of evidence, and is final for the purposes of the preliminary examination unless palpably erroneous in law. *Ib.*
3. It is enough if it appear that there was legal evidence on which the commissioner might properly conclude that the accused had committed offences within the treaty as charged, and so be justified in exercising his power to commit them to await the action of the Executive Department. *Ib.*

See JURISDICTION, A, 8.

HABEAS CORPUS.

See EXTRADITION.

INDIAN DEPREDACTIONS.

See CLAIMS AGAINST THE UNITED STATES;
JURISDICTION, E, 1.

INTERSTATE COMMERCE.

See CONSTITUTIONAL LAW, A, 12.

JUDGMENT LIEN.

See LOCAL LAW, 1.

JUDGMENT.

In June, 1861, O. recovered judgment in a Pennsylvania court for the recovery of a sum of money against H. and F., both residents of that State. In 1865 H. removed to Louisiana, and became a citizen of that

State and continued so until his death. In 1866 the judgment was revived by *scire facias*, process being served on F. only. In 1871 it was in like manner revived. In 1880 O. proceeded on the judgment against H. in the courts of Louisiana, where a judgment is barred by prescription in ten years from its rendition. Being compelled to elect upon which judgment he relied, he elected to stand upon the *scire facias* judgment of 1871. *Held*, that, viewed as a new judgment rendered as in an action of debt, the judgment had no binding force in Louisiana, as H. had not been served with process or voluntarily appeared; and considered as in continuation of the prior action and a revival of the original judgment for purposes of execution, it operated merely to keep in force the local lien, and, for the same reason, it could not be availed of as removing the statutory bar of the *lex fori*. *Owens v. Henry*, 642.

See DISTRICT OF COLUMBIA, 4.

JURISDICTION.

A. JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES.

1. As the jurisdiction of the Circuit Court of the United States was invoked throughout this litigation upon the ground of diverse citizenship, and as this bill must be regarded as ancillary, auxiliary or supplemental to the suit for the foreclosure of the mortgage, or, as it were, in continuation thereof, the decree of the Circuit Court of Appeals in that suit being made final by section 6 of the act of March 3, 1891, c. 517, 26 Stat. 828, no appeal lies to this court. *Carey v. Houston & Texas Central Railway Co.*, 115.
2. The decision by the Supreme Court of the State that the exemption from taxation applies to new stock in the bank, created and issued since the adoption of the constitution of 1870, being in favor of the exemption claimed by the bank, cannot be reviewed by this court. *Bank of Commerce v. Tennessee*, 134.
3. As a claim of invention, made in an application for a patent, is a right incapable of being ascertained and valued in money, no appeal lies to this court from a judgment of the Court of Appeals for the District of Columbia, affirming the decision of the Supreme Court of the District that the applicant was not entitled to a decree, under Rev. Stat. § 4915, authorizing the Commissioner of Patents to issue a patent to him for his alleged invention. *Durham v. Seymour*, 235.
4. When, in a case appealed from a Circuit Court, the record discloses that the defendants below appealed upon the express ground that the court erred in taking jurisdiction of the bill and in not dismissing the bill for want of jurisdiction, and prayed that their appeal should be allowed, and *the question of jurisdiction* be certified to the Supreme Court, and that *said appeal was allowed*, and the certificate further states that there is sent a true copy of so much of the record

as is necessary for the determination of the question of jurisdiction, and as part of the record so certified is the opinion of the court below, in accordance with which defendants' motion to dismiss the cause for want of jurisdiction was denied, it sufficiently shows that the appeal was granted solely upon the question of jurisdiction. *Smith v. McKay*, 355.

5. When the requisite citizenship of the parties appears, and the subject-matter is such that the Circuit Court is competent to deal with it, the jurisdiction of that court attaches, and whether the court sustains the complainant's prayer for equitable relief, or dismisses the bill with leave to bring an action at law, either is a valid exercise of jurisdiction; and if any error be committed in the exercise of such jurisdiction, it can only be remedied by an appeal to the Circuit Court of Appeals. *Ib.*
6. An interlocutory order or decree of the Supreme Court of the District of Columbia at special term may be reviewed by the general term on appeal, without awaiting a final determination of the cause; and, on appeal to this court from the final decree at general term, the entire record is brought up for review. *Spalding v. Mason*, 375.
7. This court cannot pass upon a refusal of a motion to instruct generally in defendant's favor when the record contains only a part of the evidence. *Hansen v. Boyd*, 397.
8. The appellees were brought before a Circuit Court commissioner in the Western District of Texas, charged by the Mexican consul with the commission, in Mexico, of a crime extraditable under the treaty of June 20, 1862. The commissioner found the evidence sufficient to warrant their commitment for extradition. On the application of the prisoners a writ of *habeas corpus* was issued by the United States District Judge, directed to the marshal of the district. The judge, after hearing, decided that the offences charged were political offences, and not extraditable, and ordered the prisoners discharged. From this judgment the consul appealed to this court. *Held*, that as his government was the real party interested, the appeal was properly prosecuted by him; and as the construction of the treaty was drawn in question, it was properly taken to this court. *Ornelas v. Ruiz*, 502.
9. In an appeal from a judgment of a territorial court, with no exceptions to rulings of the court on the admission or rejection of testimony, this court is limited in its review to a determination of the question whether the facts found are sufficient to sustain the judgment rendered. *Gildersleeve v. New Mexico Mining Co.*, 573.

See JURISDICTION, B;

TAX AND TAXATION, 6.

B. JURISDICTION OF CIRCUIT COURTS OF APPEAL.

The decrees and judgments of Circuit Courts of Appeal are made final by section 6 of the Judiciary Act of March 3, 1891, where the juris-

diction of the Circuit Court over the intervenor's petition, the decree on which is appealed from, was referable to its jurisdiction of an equity suit which depended wholly upon diverse citizenship. *Rouse v. Hornsby*, 588.

C. JURISDICTION OF CIRCUIT COURTS OF THE UNITED STATES.

1. A Circuit Court of the United States has no jurisdiction of a bill to enjoin the collection of separate county taxes by separate county officers, in the State of Arkansas, against the Western Union Telegraph Company, (a corporation which has accepted the provisions of the Statute now codified in the Revised Statutes as Section 5263 to Section 5269,) on its line in each of said counties in that State, when the amount of the tax in no one of the counties reaches the sum of two thousand dollars; and this result is not affected by the fact that if the county assessments were aggregated they would exceed two thousand dollars, as the several county clerks or tax collectors cannot be joined in a single suit in a Federal court, and the jurisdiction sustained on the ground that the total amount involved exceeds the jurisdictional limitation; nor by the fact that the railroad commissioners of the State, who had already acted in the matter, were made parties defendant to the suit. *Fishback v. Western Union Telegraph Co.*, 96.
2. A bill in equity by a corporation, or by the stockholders of a corporation, in a Circuit Court of the United States, to set aside a final decree of that court against the corporation in a foreclosure suit, upon the ground that the decree was obtained by collusion and fraud and that the court had no jurisdiction to make it, is an ancillary suit and a continuation of the main suit so far as the jurisdiction of the Circuit Court as a court of the United States is concerned. *Carey v. Houston Central Texas Railway Co.*, 115.

D. JURISDICTION OF DISTRICT COURTS OF THE UNITED STATES.

Under the act of July 12, 1894, c. 132, enacting that "all criminal proceedings instituted for the trial of offences against the laws of the United States arising in the District of Minnesota shall be brought, had and prosecuted in the division of said district in which such offences were committed," the court has no jurisdiction of an indictment afterwards presented by the grand jury for the district in one division, for an offence committed in another division before the passage of the act, and for which no complaint has been made against the defendant; although the witnesses whose names are endorsed upon the indictment were summoned before the grand jury and were in actual attendance upon the court before the passage of the act. *Post v. United States*, 583.

E. JURISDICTION OF THE COURT OF CLAIMS.

1. When a petition filed in the Court of Claims alleges that a depredation was committed by an Indian or Indians belonging to a tribe in amity with the United States, it becomes the duty of that court to inquire as to the truth of that allegation, and its truth is not determined by the mere existence of a treaty between the United States and the tribe, or by the fact that such treaty has never been formally abrogated by a declaration of war on the part of either, but the inquiry is whether, as a matter of fact, the tribe was at the time, as a tribe, in a state of actual peace with the United States: and if it appears that the depredation was committed by a single individual, or a few individuals without the consent and against the knowledge of the tribe, the court may proceed to investigate the amount of the loss, and render judgment therefor; but if, on the other hand, the tribe, as a tribe, was engaged in actual hostilities with the United States, the judgment of the Court of Claims must be that the allegation of the petition is not sustained, and that the claim is not one within its province to adjudicate. *Marks v. United States*, 297.
2. *Johnson v. United States*, 160 U. S. 546, affirmed to the point that, by clause 2 of section 1 of the act of March 3, 1891, c. 538, 26 Stat. 851, the jurisdiction of the Court of Claims was limited to claims which, on March 3, 1885, had either been examined and allowed by the Department of the Interior, or were then pending therein for examination. *Ib.*

See CLAIMS AGAINST THE UNITED STATES.

LEASE.

See NATIONAL BANK, 1.

LACHES.

The court bases its conclusion in this case upon the fact that the record exhibits such gross laches on the part of complainant, or those with whom he is in privity, and upon whose rights his own must depend, as to effectually debar him from a right to the relief which he seeks. *Gildersleeve v. New Mexico Mining Co.*, 573.

LIMITATION, STATUTES OF.

See BANKRUPTCY, 1.

LOCAL LAW.

1. In Alabama a judgment in itself imposes no lien upon the property of the judgment debtor, but the issue of an execution and its delivery to the officer are necessary to create a lien. *Beebe v. United States*, 104.
2. According to the settled rule in Alabama, when an execution comes to

the hands of the sheriff the lien attaches and continues from term to term, provided alias and pluries writs are duly issued and delivered, and while it is so kept alive the lien is, upon levy and sale, paramount to any intermediate conveyance by the debtor; and as, in this case, the facts show that valid executions were issued and delivered to the marshal as early as January 23, 1877, and on return alias executions were duly issued and duly levied, the subsequent sale related back to the original issue, and took the legal title out of the plaintiff in error prior to his deed of March 22, 1877. *Ib.*

3. When it appears by a memorandum on judgment records that "by consent execution is stayed until" a date named, and execution issues before that date, it will be presumed, nothing appearing to the contrary, that it was rightly issued, and that either the agreement lacked consideration, or was not authorized, or had been by mutual assent annulled, or that the terms of the agreement had not been complied with by defendant. *Ib.*
4. *Arndt v. Griggs*, 134 U. S. 316, affirmed to the point that the duty of determining unsettled questions respecting title to real estate is local in its nature, to be discharged in such mode as may be provided by the State in which the land is situated, when such mode does not conflict with some special prohibition of the Constitution, or is not against natural justice. *Lynch v. Murphy*, 247.
5. Upon proceedings under the statute of Texas of March 20, 1848, c. 145, for the escheat of land of a person who is dead, in which the petition describes the land, gives his name, and alleges that he died intestate and without heirs, that no letters of administration upon his estate had been granted, that there is no tenant or person in actual or constructive possession of the land, nor any person, known to the petitioner, claiming an estate therein, and that the land has escheated to the State of Texas; and an order of notice to all persons interested in the estate has been published, as required by the statute; and, after a hearing of all who appear and plead, judgment is entered, describing the land, and declaring that it has escheated to the State; the judgment is conclusive evidence of the State's title in the land, not only against any tenants or claimants having had actual notice by *scire facias*, or having appeared and pleaded, but also against all other persons interested in the estate and having had constructive notice by publication. *Hamilton v. Brown*, 256.
6. The constitution of Texas of 1869, art. 4, sect. 20, declaring it to be the duty of the comptroller of public accounts to "take charge of all escheated property," did not affect pending proceedings for escheat under the statute of March 20, 1848, c. 145, so far as concerned the vesting of the title to the land in the State, even if it should be held to repeal the provisions for a subsequent sale of the land by the sheriff. *Ib.*
7. The constitution of Texas of 1869, art. 10, sect. 6, forbidding the legis-

lature to grant lands except to actual settlers, did not affect judicial proceedings to declare and enforce escheats. *Ib.*

Louisiana. See JUDGMENT.

MARSHAL.

Claims of deputy marshals against a marshal for services stand upon the same footing as those of an ordinary employé against his employer. *Douglas v. Wallace*, 346.

MASTER AND SERVANT.

See RAILROAD, 1, 2, 8, 4.

MEXICAN GRANT.

See PUBLIC LAND, 2, 3.

MUNICIPAL BOND.

1. The defendant in error, a municipal county of Illinois, under authority from the State, issued its bonds in payment of a subscription to stock in a railway company, made upon a condition which was never complied with, and which was subsequently waived by the county. It received certificates for the stock so subscribed for, and still holds them. It paid interest upon its bonds as maturing, and refunded them by an issue of new bonds for like amount under legislative authority. *Held*, that the bonds originally issued were binding and subsisting obligations of the county, and having been recognized as such by the county authorities by lifting them with new bonds under the refunding act, those funding bonds were valid and binding obligations upon the county in the hands of a *bona fide* holder for value before maturity. *Graves v. Saline County*, 359.
2. Where there is a total want of power to subscribe for such stock and to issue bonds in payment, a municipality cannot estop itself from raising such a defence by admissions, or by issuing securities negotiable in form, nor even by receiving and enjoying the proceeds of such bonds. *Ib.*
3. Where a municipality is empowered to subscribe with or without conditions as it may think fit, and where the conditions are such as it chooses to impose, there seems to be no good reason why it may not be competent for such municipality to waive such self-imposed conditions, provided, of course, such waiver is by the municipality acting as the principal, and not by mere agents or official persons. *Ib.*
4. The recital in a series of bonds, issued by a municipal corporation in Indiana in payment of its subscription to the stock of a railroad company, that they were issued "in pursuance of an act of the legislature of the State of Indiana and ordinances of the city council of said city,

passed in pursuance thereof," do not put a purchaser upon inquiry as to the terms of the ordinances under which the bonds were issued. *Evansville v. Dennett*, 434.

5. The recital in such series that the bonds were issued to the railroad company, "by virtue of a resolution of said city council passed May 23, 1870," do not put a purchaser upon inquiry as to the terms of that resolution and charge him with knowledge of its terms. *Ib.*
6. Such recitals in such bonds as against a *bona fide* purchaser for value of such bonds estop the municipal corporation from asserting that the bonds were not issued, for stock subscribed, upon a petition of two thirds of the resident freeholders of the city, distinctly setting forth the company in which stock was to be taken, and the number and amount of shares to be subscribed. *Ib.*
7. Under the recitals in the bonds issued to the railroad company a *bona fide* purchaser for value was not put upon inquiry to ascertain whether a proper petition of two thirds of the residents of Evansville, freeholders of that city, had been presented to the common council, before that body had subscribed for stock in the said railroad company. *Ib.*
8. A *bona fide* purchaser for value of the bonds issued to the Evansville, Carmi, and Paducah Railroad Company is not charged by the recitals in said bonds with notice that they were issued in pursuance of an invalid act, and in pursuance of an election under it; and he had a right to assume, from the recital, that the prerequisites of both the valid act and the invalid act had been observed by the common council before the issuance of such bonds. *Ib.*

MUNICIPAL GOVERNMENT.

See DISTRICT OF COLUMBIA.

NATIONAL BANK.

1. After passing into the hands of a receiver, appointed by the Comptroller of the Currency, under the provisions of the Revised Statutes, a national bank remains liable, during the remainder of the term, for accrued and accruing rent under a lease of the premises occupied by it, although the receiver may have abandoned and surrendered them; but if the lessor, in the exercise of a power conferred by the lease, reenters and relets the premises, the liability of the bank after the reletting is limited to the rent then accrued and unpaid, and the diminution, if any, in the rent for the remainder of the term, after the reletting. *Chemical National Bank v. Hartford Deposit Co.*, 1.
2. Section 130 of chapter 689 of the laws of New York of 1892, providing for the payment by the receiver of an insolvent bank, in the first place, of deposits in the bank by savings banks, when applied to an insolvent national bank, is in conflict with § 5236 of the Revised Statutes of the United States, directing the Comptroller of the

Currency to make ratable dividends of the money paid over to him by such receiver, on all claims proved to his satisfaction, or adjudicated in a court of competent jurisdiction, and is therefore void when attempted to be applied to a national bank. *Davis v. Elmira Savings Bank*, 275.

See CORPORATION, 1.

PATENT FOR INVENTION.

1. The United States have no right to use a patented invention without license of the patentee or making compensation to him: *Belknap v. Schild*, 10.
2. Officers or agents of the United States, although acting under order of the United States, are personally liable to be sued for their own infringement of a patent. *Ib.*
3. A patentee has no title in things made by others in violation of his patent. *Ib.*
4. In a suit in equity for infringement of a patent, the defendants are liable to account for such profits only as have accrued to themselves from the use of the invention. *Ib.*
5. In a suit in equity for infringement of a patent, if no ground is shown for equitable relief, by injunction, by account of profits, or otherwise, the plaintiff should be left to his action at law for damages. *Ib.*
6. Upon a suit in equity by the patentee of an improvement in caisson gates against officers of the United States, using in their official capacity a caisson gate made and used by the United States, in infringement of his patent, at a dry dock in a navy yard, the plaintiff is not entitled to an injunction. Nor can he recover profits, if the only profit proved is a saving to the United States in the cost of the gate. *Ib.*

See JURISDICTION, A, 3.

POLICE POWER.

See RAILROAD, 14, 15.

POSTMASTER GENERAL.

1. It was the duty of the Postmaster General to cause all cheques or warrants issued under the authority of the act of March 3, 1883, c. 119, 22 Stat. 487, and of the act of August 4, 1886, c. 903, § 8, 24 Stat. 256, 307, 308, to be sent directly to the claimants, and it was his right to call their attention to the provisions of the act of 1883; and if the legislation to which attention was thus incited worked injury to an attorney employed by such claimants to present their claims, in that it gave his clients an opportunity to evade, for a time, the payment of what they may have agreed to allow him, it was an injury from which no cause of action could arise. *Spalding v. Vilas*, 483.
2. The Postmaster General was directly in the line of duty when, in order

that the will of Congress as expressed in the act of 1883 might be carried out, he informed claimants that they were under no legal obligation to respect any transfer, assignment or power of attorney, which section 3477 of the Revised Statutes declared to be null and void. If the plaintiff had not taken any such transfers, assignments, or powers of attorney from his clients, he could not have been injured by the reference made by the Postmaster General to that section. If he had taken such instruments, he cannot complain that the Postmaster General called the attention of claimants to the statute on the subject, and correctly interpreted it. *Ib.*

POST OFFICE.

See CRIMINAL LAW, 1, 2, 6, 9, 11.

PRACTICE.

1. When the bond, in a case brought here by writ of error, is defective, this court will generally allow a proper bond to be filed, if necessary, *Union Pacific Co. v. Callaghan*, 91.
2. An exception to the refusal of the trial court to find for the defendant is waived, if made by defendant without resting his case. *Ib.*
3. Where propositions submitted to a jury are excepted to in mass, the exception will be overruled provided any of the propositions be correct. *Ib.*
4. Where a general exception is taken to the refusal of a series of instructions, it will not be considered if any one of the propositions is unsound. *Ib.*
5. The decree dismissing the appeal in this case, (160 U. S. 170,) is vacated, and the decree below reversed without costs to either party, and the cause remanded with directions to dismiss the bill. *New Orleans Flour Inspectors v. Glover*, 101.
6. Where there is color for a motion to dismiss on the ground of want of jurisdiction, and the claim is not so clearly frivolous as to authorize the dismissal, the court may consider and pass upon the question raised. *Douglas v. Wallace*, 346.
7. As the rest of the judgment below is valid the court decides that if the defendants in error will within a reasonable time during the present term of this court file in the Circuit Court of the United States for the District of Minnesota a remittitur of the invalid excess, and produce and file a certified copy thereof in this court, the judgment, less the amount so remitted, will be affirmed; but, if this is not done, the judgment will be reversed; and in either event the costs must be paid by defendant in error. *Hansen v. Boyd*, 397.
8. The order of the District Court requiring the petitioners to enter into recognizances for their appearance to answer its judgment was rightly made. *Ornelas v. Ruiz*, 502.

See JURISDICTION, A, 85

LOCAL LAW, 2, 3.

PUBLIC LAND.

1. If, after the Secretary of the Interior has decided a contest as to the right of preëmption to public land in favor of one contestant, and has granted a rehearing, but before the rehearing is had, Congress passes an act confirming the entry of that contestant, and directing that a patent issue to him, and a patent is issued accordingly, a writ of mandamus will not lie to compel the Secretary to proceed to adjudication of the contest *In re Emblen, petitioner*, 52.
2. In order to the confirmation of a Mexican grant by the Court of Private Land Claims, it must appear not only that the title was lawfully and regularly derived, but that, if the grant were not complete and perfect, the claimant could, by right and not by grace, have demanded that it should be made perfect by the former government, had the territory not been acquired by the United States; and by the treaty no grant could be considered obligatory which had not been theretofore located. *Ainsa v. United States*, 208.
3. The grant under which the plaintiff in error claims was a grant of a specific quantity of land, to wit: seven and a half sitios and two scant caballerios within exterior boundaries, and not a grant of the entire eighteen leagues contained within those exterior boundaries; and as location was a prerequisite to any action by the Court of Private Land Claims, and as the grant had not been located at the date of the Gadsden treaty, it cannot be confirmed. *Ib.*

RAILROAD.

1. A railroad company is bound to provide suitable and safe materials and structures in the construction of its road and appurtenances, and if from a defective construction thereof an injury happen to one of its servants the company is liable for the injury sustained. *Union Pacific Railway Co. v. O'Brien*, 451.
2. The servant, on his part, undertakes the risks of the employment as far as they spring from defects incident to the service, but he does not take the risks of the negligence of the master itself. *Ib.*
3. The master is not to be held as guaranteeing or warranting absolute safety under all circumstances, but is bound to exercise the care which the exigency reasonably demands in furnishing proper roadbed, track, and other structures, including sufficient culverts for the escape of water collected and accumulated by embankments and excavations. *Ib.*
4. There are cases in which, if the employé knows of the risk and the danger attendant upon it, he may be held to have taken the hazard by accepting or continuing in the employment; but this case, as left to the jury under the particular facts, is not one of them. *Ib.*
5. In 1856, the Minneapolis and St. Cloud Railroad Company was incorporated by the legislature of the Territory of Minnesota, with authority to construct a railroad on an indicated route, and to connect its

road by branches with any other road in the Territory, or to become part owner or lessee of any railroad in said Territory; and also "to connect with any railroad running in the same direction with this road, and where there may be any portion of another road which may be used by this company." By a subsequent act it was, in 1865, authorized "to connect with or adopt as its own, any other railroad running in the same general direction with either of its main lines or any branch roads, and which said corporation is authorized to construct;" "to consolidate the whole or any portion of its capital stock with the capital stock or any portion thereof of any other road having the same general direction or location, or to become merged therein by way of substitution;" to consolidate any portion of its road and property with the franchise of any other railroad company or any portion thereof; and to consolidate the whole or any portion of its main line or branches with the rights, powers, franchises, grants and effects of any other railroad. These several rights, privileges and franchises were duly accepted by the railway company, and its road was constructed and put in operation. In 1874 the State of Minnesota enacted that "no railroad corporation or the lessees, purchasers or managers of any railroad corporation shall consolidate the stock, property or franchises of such corporation with, or lease or purchase the works or franchises of, or in any way control any other railroad corporation owning or having under its control a parallel or competing line; nor shall any officer of such railroad corporation act as the officer of any other railroad corporation owning or having the control of a parallel or competing line; and the question whether railroads are parallel or competing lines shall, when demanded by the party complainant, be decided by a jury as in other civil issues;" and in 1881 its legislature enacted that "no railroad corporation shall consolidate with, lease or purchase, or in any way become owner of, or control any other railroad corporation, or any stock, franchise, rights of property thereof, which owns or controls a parallel or competing line." In 1889 the company changed its name to Great Northern Railway Company and extended its road towards the Pacific. The Northern Pacific Railroad being about to be reorganized, it was proposed that the Great Northern company should guarantee, for the benefit of the holders of the bonds to be issued by the reorganized company, the payment of the principal of, and interest upon such bonds, and as a consideration for such guaranty, and as a compensation for the risk to the stockholders, the reorganized company should transfer to the shareholders of the Northern company, or to a trustee for their use, one half the capital stock of the reorganized company; and that the Northern Pacific should join with the Great Northern in providing facilities for an interchange of cars and traffic between their respective lines, and should interchange traffic with the Northern company, and operate its trains to that end upon reasonable, fair and lawful terms under joint

tariffs or otherwise, the Northern company having the right to bill its traffic, passengers and freight from points on its own line to points on the Northern Pacific not reached by the Great Northern, with the further right to make use of the terminal facilities of the Northern Pacific at points where such facilities would be found to be convenient and economical, jointly with that company. A stockholder of the Great Northern company filed this bill against it, to restrain it from carrying out such agreement. *Held*, that the Great Northern company was subject to the provisions of the acts of 1874 and 1881, and that the proposed arrangement was in violation of the provisions in those acts prohibiting railroad corporations from consolidating with, leasing or purchasing, or in any other way becoming the owner of, or controlling any other railroad corporation, or the stock, franchises or rights of property thereof, having a parallel or competing line, and was therefore beyond the corporate power of the company to make. *Pearsall v. Great Northern Railway Co.*, 646.

6. Where, by a railway charter, a general power is given to consolidate with, purchase, lease or acquire the stock of other roads, which has remained unexecuted, it is within the competency of the legislature to declare, by subsequent acts, that this power shall not extend to the purchase, lease or consolidation with parallel or competing lines. *Ib.*
7. A power given in a charter of a railroad to connect or unite with other roads refers merely to a physical connection of the tracks, and does not authorize the purchase, or even the lease of such roads or road, or any union of franchises. *Louisville & Nashville Railroad Co. v. Kentucky*, 677.
8. The several statutes of Kentucky and of Tennessee relating to the Louisville and Nashville Railroad Company, which are quoted from or referred to in the opinion of the court, confer upon that company no general right to purchase other roads, or to consolidate with them. *Ib.*
9. The union referred to in those statutes is limited to a union with a road already connected with the Louisville and Nashville by running into the same town, and has and could have no possible relation to the acquirement of a parallel or competing line. *Ib.*
10. The third section of the Kentucky act of 1856 reenacting the Tennessee act of 1855, and providing that the Louisville and Nashville company may from time to time extend any branch road and may purchase and hold any road constructed by another company did not confer a general power to purchase roads constructed by other companies regardless of their relations or connections with the Louisville and Nashville road. *Ib.*
11. A contemporaneous construction of its charter which ratified the purchase of a few short local lines does not justify the company in consolidating with a parallel and competing line between its two termini

- with a view of destroying the competition which had previously existed between the two lines. *Ib.*
12. The Chesapeake, Ohio and Southwestern Railroad Company was never vested with the power to consolidate its capital stock, franchises or property with that of any other company owning a parallel or competing line. *Ib.*
 13. If from reasons of public policy, a legislature declares that a railway company shall not become the purchaser of a parallel or competing line, the purchase is not the less unlawful, because the parties choose to let it take the form of a judicial sale. *Ib.*
 14. Whatever is contrary to public policy or inimical to the public interests is subject to the police power of the State, and within legislative control; and, in the exertion of such power, the legislature is vested with a large discretion, which, if exercised *bona fide* for the protection of the public, is beyond the reach of judicial inquiry. *Ib.*
 15. Section 201 of the constitution of the State of Kentucky of 1891, providing that "no railroad, telegraph, telephone, bridge or common carrier company shall consolidate its capital stock, franchises or property, or pool its earnings, in whole or in part, with any other railroad, telegraph, telephone, bridge or common carrier company, owning a parallel or competing line or structure; or acquire, by purchase, lease or otherwise, any parallel or competing line or structure, or operate the same; nor shall any railroad company or other common carrier combine to make any contract with the owners of any vessel that leaves or makes port in this State, or with any common carrier, by which combination or contract the earnings of the one doing the carrying are to be shared by the other not doing the carrying," is a legitimate exercise of the police power of the State, and forbids the consolidation between the Louisville and Nashville Company and the Chesapeake, Ohio and Southwestern Company, which is the subject of controversy in this suit, at least so far as the power to make it remained unexecuted. *Ib.*

See CENTRAL PACIFIC RAILROAD;
CONSTITUTIONAL LAW, 7 to 11.

RECORD.

See EVIDENCE, 3.

STATUTE.

A. STATUTES OF THE UNITED STATES.

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| <i>See</i> ADMIRALTY, 1, 2, 7;
BANKRUPTCY, 1;
CENTRAL PACIFIC RAILROAD, 1;
CLAIMS AGAINST THE UNITED
STATES, 1, 2, 3, 4, 6, 7;
CONSTITUTIONAL LAW, A, 4, 12; | CRIMINAL LAW, 1, 6;
DOWER;
JURISDICTION, A, 1, 3; B;
C, 1; D; E, 2;
NATIONAL BANK, 1, 2;
POSTMASTER GENERAL, 1, 2. |
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B. STATUTES OF STATES AND TERRITORIES.

- Arkansas.* See CONSTITUTIONAL LAW, A, 11.
Connecticut. See CONSTITUTIONAL LAW, A, 5.
Kentucky. See RAILROAD, 8, 9, 10.
Minnesota. See RAILROAD, 5.
New York. See NATIONAL BANK, 2.
Tennessee. See CORPORATION, 3;
RAILROAD, 8, 10;
TAX AND TAXATION, 3, 5, 7, 8.
Texas. See LOCAL LAW, 5, 6, 7.

TAX AND TAXATION.

1. When not otherwise exempted, the capital stock of a corporation, and its shares in the hands of shareholders, may both be taxed; and if so taxed it is not double taxation. *Bank of Commerce v. Tennessee*, 134.
2. The surplus accumulated by the plaintiff in error is not exempted from taxation by the provision of exemption in its charter. *Ib.*
3. A clause in the charter by a State of a banking corporation requiring it to "pay to the State an annual tax of one half of one per cent on each share of capital stock, which shall be in lieu of all other taxes," while it limits the amount of tax on each share of stock in the hands of the shareholders, does not apply to or cover the case of the capital stock of the corporation or its surplus and accumulated profits, but such capital stock, surplus and accumulated profits are liable to be taxed as the State may determine. *Shelby County v. Union & Planters' Bank*, 149.
4. The previous cases examined and shown (especially *Farrington v. Tennessee*, 95 U. S. 679, and *Gordon v. Appeal Tax Court*, 3 How. 133) not to be inconsistent with the above decision. *Ib.*
5. A state statute granting to a company incorporated by it "all the rights and privileges" which had been granted by a previous statute of the State to another corporation, does not confer upon the new company an exemption from taxation beyond a defined limit which was conferred upon the other company by the act incorporating it. *Phœnix Fire & Marine Ins. Co. v. Tennessee*, 174.
6. The ruling of the highest court of a State, in a suit to recover taxes alleged to be due, concerning the effect to be given to a former judgment of the same court as to the liability of the same parties to pay similar taxes previously assessed, is not subject to review by this court. *Ib.*
7. In 1860 the legislature of Tennessee incorporated the Energetic Insurance Company of Nashville, with a proviso in the charter limiting its taxation to one quarter of one per cent on its capital stock. In 1870 a new constitution was adopted by the State, forbidding such limitation. In 1884 the surviving corporators of the Energetic Insurance Company,

which had not then been organized, met and organized the company under that name. In 1885 the name of the company was changed by legislative act to Planters' Fire and Marine Insurance Company, and it was authorized to remove its *situs* to Memphis, which it did, and increased its capital stock. Since that time it has regularly paid its taxes at the rate named in the act of 1860. In a suit to recover taxes at the regular tax rate, which was in excess of the statutory limitation: *Held*, that the organization of the corporation having been made subsequently to the adoption of the constitution of 1870, and of its coming into force, the corporation was subject to the provisions of that instrument regulating taxation. *Planters' Insurance Co. v. Tennessee*, 193.

8. The charter of the Memphis Life and General Insurance Company contained a provision "that there shall be a state tax of one half of one per cent upon the amount of the capital actually paid in." The charter of the Home Insurance and Trust Company authorized that company to "organize with all the forms, officers, terms, powers, rights, reservations, restrictions and liabilities given to and imposed upon the Memphis Life and General Insurance Company." *Held*, that the Home Company was not subject to the provision respecting taxation in the charter of the Memphis Life Company. *Home Insurance & Trust Co. v. Tennessee*, 198.

See CONSTITUTIONAL LAW, A, 2;
CORPORATION, 2, 3;
JURISDICTION, A, 2.

UNITED STATES.

1. No suit can be maintained, or injunction granted, against the United States, unless expressly permitted by act of Congress. *Belknap v. Schild*, 10.
2. No injunction can be issued by the courts of the United States against officers of a State, to restrain or control the use of property already in the possession of the State, or money in its treasury when the suit is commenced; or to compel the State to perform its obligations; or where the State has otherwise such an interest in the object of the suit as to be a necessary party. And the same rule applies to officers of the United States. *Id.*

See PATENT FOR INVENTION, 6.

WASHINGTON.

See DISTRICT OF COLUMBIA.

WITNESS.

See CONSTITUTIONAL LAW, 12.